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IN THE

Supreme Court of the United States

October Term, 1972

No. 72 - 847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,
Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,
Appellees.

JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

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Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

Appellants* appeal from the decision of the Supreme Court of Arizona of June 30, 1972, rehearing denied September 12, 1972. They submit this statement to show that the Supreme Court of the United States has jurisdiction over this appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the Supreme Court of Arizona is reported at 108 Ariz. 373, 498 P.2d 461 (1972), attached hereto as Appendix A. The order denying the petition for rehearing, not reported, is attached hereto as Appendix B.

*The real parties in interest are named in the caption; nominal appellants, under Arizona practice, are the trial court and its judge. The three Supervisor appellees are also nominal.

JURISDICTION

This action was brought in the state court, Maricopa County, Arizona, by appellants Memorial Hospital and Henry Evaro against the County. Memorial is a nonprofit hospital, and Evaro was a resident of Maricopa County who had resided there for less than one year. The sole question was whether the County was obligated to provide free medical care in the light of an Arizona statute, A.R.S. § 11-297 A, which conditions such care upon one year's residence. The trial court held the statute invalid with an opinion attached as Appendix C. The Supreme Court vacated this judgment with an opinion dated June 30, 1972, and denied rehearing on September 12, 1972. A notice of appeal, attached hereto as Appendix D, was filed in the Supreme Court of Arizona on October 12, 1972. This Court has jurisdiction under 28 U.S.C. § 1257(2).

STATUTE INVOLVED

A.R.S. § 11-297 A is as follows:

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provision of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

QUESTION PRESENTED

Does a statute of the State of Arizona requiring a one-year residence in a given county for welfare medical care conflict with the due process, equal protection, and privileges and immunities

clauses of the Fourteenth Amendment of the Constitution of the United States, with particular reference to the "right to travel"?

STATEMENT OF THE CASE

Henry Evaro, an indigent, became a resident of Maricopa County, Arizona, in early June, 1971. On July 8, 1971, at a time when he was suffering from acute asthma and bronchial illness,* he was referred by his attending physician to the plaintiff Memorial Hospital, a nonprofit institution in Maricopa County, Arizona. Under the Arizona statute, the proper procedure for Memorial, finding itself with an indigent patient who qualified for County care, was to request the County to accept the patient in the County Hospital. Such a request was made and acceptance of the patient was declined because of the one-year rule.

This action was instituted to determine whether Maricopa County was obligated to provide care for this indigent and to reimburse Memorial for the cost sustained as a result of the claimed wrongful exclusion from the County Hospital. Necessarily this required an adjudication of the validity of the Arizona statute which exempts counties from this obligation as to persons who have been residents for less than a year. The trial court held the statute unconstitutional, believing itself compelled to this result by the decision of this Court in *Shapiro v. Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). The principal case following *Shapiro* in Arizona was a three-judge district court opinion dealing with the identical question, *Valenciano v. Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), which held this same statute unconstitutional.

The Supreme Court of Arizona overruled the trial court, declining to follow the *Valenciano* decision. The federal question

*The statute permitted care without regard to residence in "emergency" situations, an exception not involved here since this was not an "emergency" patient.

was presented in the complaint at the trial court, is essentially the only matter considered there, and is the only matter considered by the State Supreme Court.

THE QUESTIONS ARE SUBSTANTIAL

1. We deal with the flattest conceivable conflict. A.R.S. § 11-297 A has been declared unconstitutional by a three-judge district court in *Valenciano v. Bateman,* and has been upheld by the State Supreme Court in the instant case. *Valenciano* happens to deal with Pinal County in Arizona and the instant case happens to deal with adjacent Maricopa County. Under Arizona law, Supervisors are personally liable for illegal expenditures, A.R.S. § 11-641; *Pima County v. Anklam,* 48 Ariz. 248, 61 P.2d 172 (1936) (illegal payment for health care). We thus have a rule of law in Arizona under which the Supervisors of Pinal County are enjoined from obeying the statute while the Supervisors of Maricopa County must obey it and could be charged personally if they did not.

The conflict is almost as square with another three-judge district court decision, *Vaughan v. Bower,* 313 F. Supp. 37 (D. Ariz. 1970), invalidating the residence requirement of A.R.S. § 36-522, a one-year requirement for mental health care.

The instant case conflicts squarely with: (1) *Crapps v. Duvall County Hospital Authority,* 314 F. Supp. 181 (M.D. Fla. 1970), which also invalidates a one-year county residence requirement; and see also *Arnold v. Halifax Hosp. Dist.,* 314 F. Supp. 277 (M.D. Fla. 1970); (2) *Corkey v. Edwards,* 322 F. Supp. 1248 (W.D.N.C. 1971), a three-judge district court opinion holding unconstitutional a four-month health care statute.

2. A suggestion is made below that somehow the rule of law may be different where the residence requirement is measured by county geography instead of state geography. Cases holding to the contrary and applying the principles of the *Shapiro* rule to communities smaller than the states are: *King v. New Rochelle*

Municipal Housing Authority, 442 F.2d 646 (2d Cir. 1971), *cert. denied,* 404 U.S. 863 (striking down a five-year community residency requirement for admission to public housing); and *Cole v. Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970) (striking down a two-year community residency requirement for public housing). As Judge Waterman said in the *King* case, "it would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge the correlative constitutional right to travel within a state." 442 F.2d at 648.

3. So far as we have been able to discover, the decision below is the only case in the United States which has held that a one-year residency requirement for health care can outlast the decision of this Court in *Shapiro v. Thompson. Shapiro,* which dealt with welfare payments generally necessary for survival, is indeed hard to distinguish from the instant case in which the issue is medical care; as this Court said in *Shapiro,* the state may not condition on residence a denial of public benefits "upon which may depend the ability of the families to obtain the very means to subsist . . . food, shelter and other necessities of life." It would indeed be an odd constitutional limitation if a state cannot use residence to cause a person to suffer the pangs of hunger but can use it to permit him to suffer the pain of wheezing and gasping for breath, as in the case of the plaintiff.

As further illustrations that health care is regarded as covered by *Shapiro,* with express recognition of *Valenciano,* see *Besaw v. Affleck,* 335 F. Supp. 775, 780 (a three-judge court, D. R.I. 1971); *Opinion of the Justices,* 273 N.E.2d 879, 880 (Mass. 1971).

4. The particular decision here may be a local eccentricity, but the problem is universal. We abstain from the usual statistical proof as to migration of people throughout the United States, because the conventional case materials cited above show that this problem arises all over the country. For recent illustration of the

same problem in the area of voting, see *Dunn v. Blumstein*, 405 U.S. 330, 95 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

5. The question is no abstraction either in terms of health care or dollars. Arizona is one of the fastest growing states in the Union. Appellee here estimated in the court below that the dollar cost to this county of providing medical care to indigents of the Evaro type would be about $2,500,000. That cost will either be borne by the taxpayers, as we contend is proper, or the indigents will continue to be left in the private hospitals with the costs necessarily being spread over the paying private patients and their insurers. The only remaining alternative is that these persons will get no care at all until they are at death's door and have become "emergencies," and this, too often, happens now.

CONCLUSION

The decision below warrants summary reversal. In any case, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

JOHN P. FRANK
WALTER CHEIFETZ
MARY M. SCHROEDER
Counsel for Appellants

December, 1972.

APPENDIX A

IN THE
SUPREME COURT OF THE
STATE OF ARIZONA
In Banc

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	No. 10750

SPECIAL ACTION
PRAYER FOR RELIEF GRANTED
JUDGMENT VACATED

Moise Berger, Maricopa County Attorney by William Carter, Deputy County Attorney Attorneys for Petitioners	Phoenix
Lewis & Roca by Walter Cheifetz Attorneys for Respondents	Phoenix

HOLOHAN, Justice:

Petitioner, the Board of Supervisors of Maricopa County, filed this petition for special action to seek a review of the order and judgment of the Superior Court compelling the Petitioner to accept the Respondent Evaro as a patient at the Maricopa County General Hospital. The Respondent Superior Court ruled that the residency requirement in A.R.S. § 11-297 was unconstitutional, and that all persons in the county who were indigent would be entitled to medical care at the county hospital irrespective of the length of residence within the county. Because of the importance of the issues involved and the need for a prompt resolution of the problem, the Petition was accepted for determination by this Court.

The parties have stipulated the essential facts. They have agreed that the Respondent Evaro was an indigent person who required continued medical care for the preservation of his health and well being, but his medical condition did not constitute an emergency case needing immediate hospital or medical care. The Respondent Evaro had not been a resident of Maricopa County for 12 months preceding the requirement for medical care or at the time of the filing of the action in the Superior Court. He was treated at Memorial Hospital, and the hospital joined with Evaro in the action in the Superior Court to compel the Board of Supervisors to accept the Respondent as a patient at the County General Hospital, and to pay the Respondent Memorial Hospital the sum of $1,202.60 for hospital care furnished Evaro up to the time of the filing in the Superior Court.

Substantially, the same facts as here presented were submitted to the Superior Court, and that court ruled in favor of the position of the Respondents holding that the residency requirement found in A.R.S. § 11-297 was unconstitutional and void and, therefore, the Petitioners were ordered to accept Evaro as a patient at the County General Hospital where his medical care

was to be provided, and judgment was given against the Board of Supervisors and in favor of Memorial Hospital.

The sole question presented in this cause is whether the residency requirement of the Statute violates the Federal Constitution.

A.R.S. § 11-297 provides:

> "A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief * * * without first filing * * * a statement * * * that he is an indigent * * * and that he has been a resident of the county for the preceding twelve months."

The principal case relied upon by Respondents is that of Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Supreme Court of the United States declared a one year residency requirement of a state for eligibility for welfare to be unconstitutional. The U. S. Supreme Court held that such a residency requirement constituted an "invidious" classification which interfered with a fundamental right, the right to travel, and, in the absence of a compelling and substantial state interest, such residency requirement cannot stand.

While the *Shapiro* case dealt with eligibility for welfare funds which were described as necessary to life and well being, various federal courts have extended the ruling to apply to a host of situations. This has largely resulted because of the limitation placed by the Court on the *Shapiro* holding. See Footnote 21 on page 638 of 394 U.S. It would seem that the matter is left for a case by case determination. A decision by the California Court of Appeals sustaining that state's residency requirement for tuition free education, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.Rptr. 260 (1969), was left standing when the U.S. Supreme Court, without opinion, dismissed the appeal, 396 U.S. 554, 90 S.Ct. 754, 24 L.Ed.2d 747 (1970). A similar decision by a three-judge panel upholding the Minnesota residency requirement

was affirmed by the U.S. Supreme Court without opinion, Starns v. Malkerson, 326 F.Supp. 234 (D.Minn., 1970), *aff'd* 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Following these authorities and others, we recently sustained the residency requirement of this state classifying students at the State Universities, and approved as constitutional the requirement that students with less than the required residency pay a greater tuition than the resident students. Arizona Board of Regents v. Harper, ... Ariz. ...., 495 P.2d 453 (1972)..

Recently, the U.S. Supreme Court in Dunn v. Blumstein, ... U.S. ...., 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), struck down the Tennessee one year residency for eligibility to vote as not furthering any compelling state interest and as being in violation of the equal protection clause of the Fourteenth Amendment. The Court found that the residence requirement in voting deprived citizens of two fundamental rights, the right to vote and the right to travel. In *Dunn,* as in *Shapiro,* the Court concludes that any classification which serves to penalize the exercise of a fundamental right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.

Following the *Shapiro* decision, the precise issue presented in this cause was decided by the Arizona Court of Appeals in Board of Supervisors v. Robinson, 10 Ariz.App. 238, 457 P.2d 951 (1969), vacated by us as moot, 105 Ariz. 280, 463 P.2d 536 (1970), and in a three-judge federal case Valenciano v. Bateman, 323 F.Supp. 600 (D.Ariz., 1971). In each instance the court held the classification was unconstitutional.

The county residency requirement for non-emergency medical treatment does not discriminate in favor of residents of Arizona versus recent arrivals. The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied. The district court in *Valenciano*

was not impressed with this position, and their position was that there was no distinction between interstate and intrastate travel.

Whether the district court's rationale in *Valenciano* is sound or not is not terribly important. The main point is that the Legislature was not intent on interfering with interstate travel as was the fact in the *Shapiro* case. Nor does the matter in issue deal with such fundamental rights as speech or voting. Contrary to the Court of Appeals and the district court, we believe that this classification more properly falls within the permissible area of reasonable regulation as approved in Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). The U.S. Supreme Court held the Maryland maximum welfare grant regulation constitutional although the grant placed an absolute limit on the amount to be paid a dependent family regardless of size and actual need. The Maryland statute and regulations, as in a number of states, fix a standard of need for an eligible family, and the standard of need is increased with each additional person or child in the household subject to a maximum limit of $250 per month irrespective of the number of children in the family needing the assistance. The classification was upheld on the "reasonable basis" test. As the Court said in *Dandridge*:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v Natural Carbonic Gas Co., 220 US 61, 78, 5 LEd 369 377, 31 S Ct 337. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 US 61, 69-70, 57 LEd 730, 734, 33 S Ct 441. 'A statutory discrimination will not be set aside if any state of

facts reasonably may be conceived to justify it.' McGowan v Maryland, 366 US 420, 426, 6 LEd2d 393, 399, 81 S Ct 1101." 397 U.S. at p. 485.

The Legislature has placed the sole and exclusive responsibility for hospitalization and medical care of the indigent sick on county government. A.R.S. § 11-291. No particular standard is set to guide the counties other than that they may include in their budgets and tax levy such amount as is deemed necessary and adequate for the purpose. A.R.S. § 11-292.

The wide differences in county resources among the counties result in different economic ability to meet the needs of the residents within the county who need medical care. Some reasonable basis of determining the demands to be made on such county facilities or resources must exist if the county is to be able to budget and tax to carry out its responsibilities. The Legislature has chosen to use a county residency base. Our duty is not to decide whether that position is wise or whether it best fulfills the social need. Our duty is to determine whether it has rational basis "free from invidious discrimination." We believe that the statute is constitutional.

Petitioner argues also that there is a compelling interest of county government, especially Petitioner county, in the classification. Absent a residence requirement, any indigent sick person in the state could seek admission to Petitioner's hospital, the facilities being the newest and most modern in the state, and the resulant volume would cause long waiting periods or severe hardship on Petitioner county if it tried to tax its property owners to support the indigent sick of the state. The point, while perhaps overextended, raises a serious practical problem vital to the interests of the residents of Petitioner county. Should the development of modern and effective facilities be discouraged because such efforts attract an inordinately large group of users? How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer

but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate.

The Legislature may wish to change the present system of indigent medical care from county responsibility to state responsibility with the larger tax base, but it is not our function to decide the best means of accomplishing the solution to a particular social problem. This responsibility constitutionally rests with the Legislature.

We find the residency requirements of A.R.S. § 11-297 to be constitutional and a valid exercise of legislative power and, therefore, the judgment of the Superior Court in Cause No. C251236 is vacated.

Judgment vacated.

APPENDIX B

SUPREME COURT

STATE OF ARIZONA

PHOENIX 85007

September 13, 1972

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	Supreme Court No. 10750 Maricopa County No. C 251236

The following action was taken by the Supreme Court of the State of Arizona on September 12, 1972 in regard to the above-entitled cause:

"ORDERED: Petition for Rehearing — DENIED."

Certified copy of Order Granting Special Action Prayer for Relief and Vacating Superior Court Judgment issued this date.

CLIFFORD H. WARD, Clerk
By Mary Ann Topke
Deputy Clerk

TO:

John P. Frank, Esq., Lewis & Roca, 114 W. Adams, Phoenix 85003

Moise E. Berger, Maricopa County Attorney, 101 W. Jefferson, Phoenix 85003

Hon. Donald F. Froeb, Judge of Maricopa County Superior Court, 101 West Jefferson Street, Phoenix, 85003

Clerk, Court of Appeals, Division One, State Capitol, Phoenix 85007

West Publishing Company, 50 Kellogg Blvd., St. Paul, Minnesota 55102

APPENDIX C

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MEMORIAL HOSPITAL and HENRY EVARO, Plaintiffs, v. BOARD OF SUPERVISORS, MARICOPA COUNTY, ARIZONA; and MARICOPA COUNTY, ARIZONA, Defendants.	Cause No. C-251236 MEMORANDUM OF DECISION AND ORDER

This cause was presented to the court upon agreed facts and memorandum of law.

The sole question in the case is whether Section 11-297, Arizona Revised Statutes, is unconstitutional insofar as it requires in non-emergency cases that an indigent person be a resident of the county for the preceding twelve months before he can receive hospitalization or medical care at county expense.

The issue in this case is determined by the holding of the United States Supreme Court in *Shapiro v. Thompson,* 394 U.S. 618 (1969). The application of that case to the one-year residency requirement of the statute in question discloses that this statutory provision is violative of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. See also, *Vaughn v. Bower,* 400 U.S. 884, aff'g. memo. 313 F. Supp. 37 (D.C. Ariz. 1970) and *Valenciano v. Bateman,* 323 F.Supp. 600 (D.C. Ariz. 1971). cf. *Board of Supervisors, Pima County v. Robinson,* 10 Ariz. App. 238, 457 P.2d 951, *vacated as moot,* 105 Ariz. 280, 463 P.2d 563.

The one-year residency requirement is severable from the general statutory provisions for medical care to the indigent sick.

Therefore, in accordance with the foregoing,

IT IS ORDERED declaring that the words "for the preceding twelve months" in Section 11-297, A.R.S., render the statute unconstitutional and are therefore void.

IT IS FURTHER ORDERED that plaintiffs recover against defendants the sum of ONE THOUSAND TWO HUNDRED AND TWO AND 60/100 DOLLARS ($1,202.60), together with costs.

IT IS FURTHER ORDERED that the defendants accept plaintiff as a patient at the Maricopa County Hospital and to provide him with necessary medical care.

DATED this 23rd day of November, 1971.

/s/ DONALD F. FROEB

JUDGE

Copy of the foregoing
Memorandum of Decision
and Order mailed this
23rd day of November,
1971, to:

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Attorneys for Plaintiffs

and

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/s/ Rose M. Birri

Rose M. Birri

APPENDIX D

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IN THE SUPREME COURT
OF THE STATE OF ARIZONA

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, vs. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents.	No. 10750 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Respondents, Superior Court of the State of Arizona, in and for the County of Maricopa, the Honorable Donald E. Froeb, Judge thereof, and Memorial Hospital, an Arizona corporation, and Henry Evaro, real parties in interest, appeal to the Supreme Court of the United States from the decision of the Supreme Court of the State of

Arizona entered in the above entitled and numbered action by the Clerk on June 30, 1972, granting Petitioners" Special Action Prayer for Relief and vacating the judgment of the Superior Court in Cause No. C-251236 dated November 23, 1971, and from the order denying Respondents' petition for rehearing dated September 12, 1972, and from all of the prior proceedings and orders connected therewith. This appeal is taken pursuant to 28 U.S.C. §§ 1257(2) and 2101(c).

DATED this 12th day of October, 1972.

LEWIS AND ROCA
By MARY M. SCHROEDER

Mary M. Schroeder
Attorneys for Respondents
100 West Washington Street
Phoenix, Arizona 85003